

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: VALSARTAN, LOSARTAN,
and IRBESARTAN PRODUCTS
LIABILITY LITIGATION

CIVIL ACTION NUMBER:

1:19-md-02875-RBK-KW

Telephone Status Conference

Mitchell H. Cohen & U.S. Courthouse
One John F. Gerry Plaza
4th & Cooper Streets
Camden, New Jersey 08101
August 5, 2021
Commencing at 1:15 p.m.

B E F O R E: THE HONORABLE THOMAS I. VANASKIE,
SPECIAL MASTER

A P P E A R A N C E S: **(Telephonically)**

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For the Plaintiffs

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription

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1 (PROCEEDINGS held telephonically, before The
2 Honorable THOMAS VANASKIE, Special Master, at 1:15 p.m.)

3 THE COURT: Rhéa Villanti is our court reporter.

4 So, Ms. Cohen, you asked for this phone call --

5 MS. COHEN: Yes.

6 THE COURT: -- along with Mr. Slater, I take it.

7 MS. COHEN: Yes.

8 THE COURT: And so what is the issue and how can I
9 help?

10 MS. COHEN: Yes. And, again, I'm sorry for the last
11 minute, and I probably should have said that we probably could
12 have gone without a court reporter. I apologize for the
13 abruptness. We just thought we could get on a call, sort of
14 just a quick issue. And I don't think it's, again, going to
15 take too long or be too convoluted. Really it relates to the
16 upcoming depositions of the expert witnesses which are underway
17 now. I think you received the various reports.

18 Plaintiffs have five experts. The first one is being
19 taken today by my colleague Ms. Lockard. We have five of them
20 coming up in short order, one next week, you know, two the week
21 after, and so forth. Three of them were agreed to be in
22 person, two are being done remotely, if I have that right. And
23 the one today is in person as well. So we have sort of a
24 slight issue about that.

25 I think today we have three defense attorneys there

1 in person and I think two plaintiffs' attorneys there in
2 person. The court reporter and videographer are remote. We
3 are trying to figure out attendance at these going forward.

4 As you know, we have some, I don't know, 80 or so
5 defendants. We're really trying to be as efficient as possible
6 and only have the person taking the deposition there with
7 perhaps one other person or two other people.

8 And so for next week I was suggesting I will be there
9 with one of my colleagues since I'm taking the lead, and then
10 also I think the Mylan counsel is planning to be there in
11 person. So that would mean three defense people in the room
12 rather than two. We are going to have enough space. We are
13 going to have other rooms.

14 So basically the first issue is two versus three
15 attendees in person. Today is, again, three defense attorneys
16 are in person, and we realize the issues with COVID and, you
17 know, the further variants and such. We're going to be very
18 careful. We'll only have vaccinated people there. And I think
19 Mr. Slater and I, on that one point, he was suggesting we only
20 have two there. I really want to have one of my colleagues
21 there, plus somebody from another defendant wants to be there.
22 So, again, we can spread out. We can be careful.

23 That's the first issue. I'll let Mr. Slater respond
24 on that one if that makes it easier.

25 THE COURT: All right. Thank you.

1 Yes, Mr. Slater.

2 MR. SLATER: Thank you, Judge.

3 First of all, counsel mentioned this deposition
4 that's happening right now, one of the plaintiffs' experts is
5 being deposed. And I checked with my colleague because I was
6 told by Ms. Cohen that there were two plaintiff lawyers and
7 three defense lawyers in the room, and I was told by Daniel
8 Nigh that he only agreed to that based on the specific level of
9 risk of aversion or lack thereof of the people in the room, and
10 that it was agreed this would be not usable or referenced with
11 regard to any other depositions. So I just want to make that
12 clear.

13 Number 2 --

14 THE COURT: Okay.

15 MR. SLATER: -- we believe that -- Your Honor knows
16 what's going on in the country with COVID right now, that
17 everybody's sense of relief is now starting to dissipate. I'm
18 personally not happy I'm going to be in a room live with the
19 expert but he was willing to do it.

20 And when he learned -- however, when he learned that
21 the lawyers are coming not from the New Jersey area or New York
22 area but are coming from all over the country, he had pause.
23 This is Dr. Lagana. He is still willing to do this in person
24 but we want to have the bare minimum necessary people in the
25 room. And the depositions are going to be conducted not only

1 in person but also by Zoom.

2 We've agreed the court reporter and the videographer
3 will not be in the room. They can be in the next room. And
4 any other lawyer that wants to be able to shuffle in and switch
5 in to ask questions later can switch with Ms. Cohen's associate
6 or partner when Ms. Cohen says, you know, I've asked my
7 questions, I'm handing off, so there's no need for someone else
8 to sit in the room.

9 We want to keep it to the bare minimum. We believe
10 that two people for the plaintiffs' side, two people from the
11 defense side is the maximum that should be in the room because
12 we have to draw a line. And I can be honest with you, I'm not
13 comfortable with more people in the room. The expert is not
14 comfortable with more people in the room.

15 And I, frankly, think it's reasonable to just limit
16 it because, again, people are not being precluded from
17 participating. They can be on Zoom. And if somebody wants to
18 be in the room to question the expert in person, they just walk
19 in from the other conference room and switch seats with the
20 person who was there before.

21 MS. COHEN: And, Your Honor, I will just respond
22 briefly.

23 You know, I don't think there's much of a difference
24 between two and three. We're dealing with a lot of different
25 defendants, getting a lot of input. We're not trying to be

1 difficult. I think we've worked out, you know, like I said,
2 80 percent of our issues on this.

3 And, frankly, there's trials going on all over the
4 country, and, you know, we'll all be very safe. The only
5 people will be vaccinated there. So, again, the difference
6 between two and three is not going to make a difference, and
7 that's -- I guess that's the last thing I would say about that,
8 Your Honor.

9 THE COURT: All right. Well, the guidance I would
10 provide to you on this is that the side of the litigation
11 taking the deposition may have up to but no more than three
12 persons who have been vaccinated, fully vaccinated, present in
13 the room appropriately spaced apart. So use a room that has
14 sufficient space in it so that you can space yourselves apart
15 just to be extra, extra cautious.

16 The other side, the side defending the deposition,
17 can have up to two vaccinated persons present for it. So when
18 it comes time for the plaintiffs to take the depositions, if
19 they want, they can have three attorneys -- three vaccinated
20 attorneys present so it will work equally both ways. But I
21 certainly understand that in a matter this significant that it
22 would be helpful not to have somebody in the room next door or
23 down the hall but in the room with you.

24 So that's the guidance I'm providing to you.

25 MS. COHEN: Okay. Thank you, Judge.

1 And then I'll just jump in to the second issue --

2 MR. SLATER: Lori, before you do that can we --

3 (Simultaneous crosstalk.)

4 MS. COHEN: I am sorry.

5 MR. SLATER: If we are going to do that, if we're
6 going to do that, Judge -- and, again, my personal concern,
7 because I'm going to be in the room, is that I personally have
8 not been on an airplane since COVID started. I am not going to
9 speak for other people, but my understanding is the defense
10 attorneys have all been on airplanes. They come from parts of
11 the country where there is much higher rates than we have here
12 in New Jersey.

13 I think if people want to be in the room if they're
14 not questioning the witness, and this is going to apply to me
15 too, I think people should wear masks. If you're not actually
16 speaking, then everyone else should have a mask on.

17 THE COURT: Okay. I'll give you that guidance,
18 Mr. Slater, that those who are not doing the examination or not
19 speaking should be masked.

20 MR. SLATER: Okay. Thank you.

21 MS. COHEN: Okay. Yes, I have no objection to that.

22 THE COURT: Must be masked, okay. We're going to be
23 cautious here. We're going to let you be able to conduct it as
24 close to normal as possible by having, when you're taking the
25 deposition, three vaccinated persons with you. I'm not saying

1 they all have to be attorneys. You could have somebody else
2 from the support staff present. I don't know how you're
3 working this. It's been a long time since I've been in your
4 shoes. So however you do it, that's fine. But those who are
5 not examining must be masked.

6 MR. SLATER: Thank you, Judge.

7 MS. COHEN: And I have no qualms about it. I'll make
8 sure to pass that along to everybody.

9 The other issue is again related to something you
10 said, Judge Vanaskie, which is the magnitude of the litigation,
11 the number of defense counsel. You know, we obviously want to
12 make these depositions as efficient as possible. I think
13 everyone has been working really hard on other phases of the
14 depositions that have been going on. But now we're in the
15 expert phase so obviously it's really significant, so it's the
16 issues of causation and science which are, you know, we think
17 very critical to the whole litigation.

18 We -- while seven hours is standard for your everyday
19 deposition in everyday litigation, you know, in other mass
20 torts we've negotiated two days, ten hours, fifteen hours. And
21 you know, again, we started talking just a little bit late so I
22 apologize for bringing this to you so late. We really thought
23 that we should have designated one main person to take each
24 deposition on both sides, our side, the defense, and the
25 plaintiff. And basically cover, you know, most of the

1 waterfront, not be switching back and forth countless times.

2 There may be some people that want to ask some
3 case-specific questions for some of the experts, this will
4 apply on both sides, but largely it will be one person doing
5 the lion's share of the questioning and then followed by, you
6 know, a couple of people to ask case-specific ones without
7 making it too crazy.

8 And then to that end we wanted to try to negotiate
9 the amount of time. We are not asking for, you know, three
10 days. I've been in some litigations where there's been many,
11 many days asked for. Here we suggested ten hours rather than
12 seven, and the reason is, there's a lot of ground to cover in
13 these depositions, obviously. One of the deponents I think has
14 261 pages to his report. There's a lot of ground to cover.

15 Do we have to use all ten hours? No. But, you know,
16 rather than feeling rushed and panicked because of the amount
17 of time, we thought ten was a very reasonable amount and would
18 ask Your Honor to give us guidance on that. That rather than
19 be, you know, limited to just seven, that everybody would have
20 up to ten at every one of the expert depositions.

21 THE COURT: All right. Mr. Slater.

22 MR. SLATER: Your Honor, we object. We object for
23 the following reasons: Number 1, when we -- it's always been
24 understood that the standard would be one day, seven hours. In
25 fact, when we were asked for dates for the expert depositions,

1 we provided dates, and the order told us that we needed to
2 provide dates when we served the reports.

3 We provided a single -- two or three or four single
4 dates. There was no objection. The dates were agreed to.
5 Everything was set, and then, as an afterthought, the defense
6 came back to us and said, Hey, now we want to extend these
7 depositions to ten hours, and we'll do them over two days.

8 So, number 1, that was never contemplated. Number 2,
9 they would need to show on the defense side good cause to
10 extend the timing, and I don't think that this call is an
11 adequate record to establish good cause to extend these
12 depositions for two days because there may be a lot more to it
13 than what's here.

14 When counsel is quoting one expert report, you would
15 have to see it to understand what's in there. So I don't think
16 that they've made the showing.

17 And I can tell you, Your Honor, when counsel says
18 there may be case-specific issues that other lawyers want to
19 ask about, I don't know what that means. These depositions are
20 limited to general causation. The only difference between any
21 of the defendants is how much NDMA or NDEA contaminated their
22 pills. And that's the only variation, either there was more or
23 there was less, and there's no reason why multiple lawyers need
24 to ask those questions. If one other lawyer wants to come in
25 who had less or more, they can ask the questions they need to

1 ask in terms of the implication for causation.

2 But there's nothing overly complex about this. This
3 is like any other scientific-based deposition where a witness
4 has opinions, where they've cited medical or scientific
5 literature. And this is limited to one opinion, the general
6 causation opinion, so there's absolutely no reason to have more
7 time. There could never be a showing of good cause under these
8 circumstances.

9 And I was concerned when counsel said multiple other
10 lawyers want to be able to question the witness as well.
11 Frankly, we believe there should be one primary questioner and
12 one back-up questioner because these are not case-specific
13 depositions. These are general causation. So the scientific
14 principles equally apply to every single defendant and the
15 contamination of every defendant's pills. It's exactly the
16 same issue: Can this plausibly cause cancer or not in humans?
17 That's the issue that's going to be evaluated in these
18 depositions.

19 If there's any inclination to potentially have these
20 depositions extend, I mean, I have an expert that's going to be
21 deposed next Friday. That's the day he gave. That's his
22 understanding of the day. When does counsel expect to continue
23 that deposition? We just found out a couple days ago they
24 wanted to. On the weekend? There's a deposition going on
25 right now in Boston. That expert has one day set aside. So I

1 think, among other reasons, it's too late, and there's
2 absolutely no need for this and certainly no showing of good
3 cause.

4 MS. COHEN: Your Honor, I'm happy to respond just
5 briefly on that. I mean, for example --

6 THE COURT: You may.

7 MS. COHEN: -- next week, we can stay late. We can
8 certainly come back another day. We're not trying to belabor
9 this. We want to get it done as efficiently as possible. We
10 don't want to invite, you know, multiple people to ask
11 questions, but there are references to different defendants
12 with different, you know -- different figures, different
13 statistics, different -- different underlying issues that are
14 addressed in the reports.

15 Again, we're going to try to cover the waterfront but
16 there may be some specific issue that someone wants to come in
17 and ask a couple questions about. We'll see what happens
18 today.

19 We're not trying to create trouble where it doesn't
20 exist, but I think having the outside of up to ten hours makes
21 sense. I certainly would be happy to stay late next Friday to
22 make sure we finish it in one day if we want to, if that's
23 preferred, that sort of thing. You know, we've worked together
24 for many years. We're not looking to create any problems here.

25 We just think that seven hours is a very tight amount

1 for the first depositions in these cases. You know, again,
2 other litigations maybe on the third round we're coming to
3 seven hours, but here to start off with and be limited --
4 having 80 different defendants to seven hours per witness is
5 just too small.

6 MR. SLATER: One other thing, Your Honor, if I could,
7 counsel suggests we can stay later next Friday. This is going
8 to be a grueling deposition. We're not going to agree for more
9 than seven hours on the record in one day. The expert will be
10 mush. So I don't think that's a reasonable solution.

11 MS. COHEN: I'm happy to stay overnight.

12 (Simultaneous crosstalk.)

13 THE COURT: I know it will depend upon availability
14 of witnesses and these things have been scheduled, and the
15 issue is being raised a bit after the fact or -- not after the
16 fact but it would have been -- maybe had to be pressed in order
17 to raise this issue sooner. It seems to me it should have been
18 something that was raised sooner, but I am not going to hold
19 that you waived the opportunity.

20 I look at Mr. -- maybe Dr. Panigrahy -- I am going to
21 mispronounce his name, Panigrahy's report. I mean, that's 260
22 pages. The other report that -- I think it is reasonable to
23 extend the deposition length to ten hours. It may be for those
24 depositions that are already scheduled for only one day and the
25 expert only has one day as availability you'll be able to say

1 at the end of seven hours that you don't need another three
2 hours, but I'm not going to require you to come back and show
3 good cause for the additional three hours.

4 And, of course, it will apply both ways. The limit
5 of time for depositions will be ten hours. I expect you as
6 professionals, and really great professionals, to be able to
7 work out the logistics of when that extra three hours gets
8 taken for those who have already been noticed and only have one
9 day of availability, but I certainly can understand why in a
10 case like this seven hours would not be sufficient.

11 And so the guidance I'm providing to you -- and if
12 you need it in an order, we'll reduce it to an order. The
13 length of the deposition will be -- the limit -- the limit on
14 the deposition will be ten hours unless otherwise extended for
15 good cause shown.

16 I think the nature of this case, Mr. Slater, gives me
17 sufficient basis for saying that there is good cause here. And
18 certainly I haven't read the reports but I've looked at them
19 and they're quite comprehensive, and I can understand why seven
20 hours may not be sufficient even though we're only dealing with
21 general causation.

22 So on both ways when expert witness depositions have
23 to be taken, the presumptive limit will be ten hours.

24 MR. SLATER: Your Honor, can we schedule that over
25 two days?

1 (Simultaneous crosstalk.)

2 THE COURT: That is fine. And I certainly understand
3 going beyond seven hours could make the expert and the lawyers
4 mush.

5 Go ahead, Mr. Slater.

6 MR. SLATER: Yeah, Your Honor, I'm going to ask, this
7 issue just came up in the last couple days -- I mean, last
8 week. We have not had a chance to brief this. They're using
9 Dr. Panigrahy's report to shoehorn everybody else in, and I can
10 tell you right now we don't have other days available to
11 continue these depositions in the month of August.

12 These experts carved out a day. The order says the
13 depositions have to be done this month. We don't have --
14 they're not going to be able to sit for more than seven hours
15 on the record in a day. They don't have other availability. I
16 don't. We have to get ready to take the defense experts'
17 depositions.

18 I mean, if this is the inclination, the defense would
19 need to show cause when they get to the seven-hour limit why
20 they need to continue it, and I think it would have to be
21 briefed or we should be briefing this now so Your Honor -- you
22 haven't seen the other reports. They haven't made any showing.
23 This is a last minute thing.

24 I don't think that this can even be complied with,
25 honestly, because what am I going to tell the doctor who is

1 being deposed next Friday, he's got to suddenly find time on
2 the weekend? I mean, everybody was asked to get dates. We
3 knew we had to give the dates when we served the reports,
4 that's what the order said. The order said "a date," so that
5 was already decided.

6 So now counsel is essentially changing an order to
7 lengthen the depositions without any showing, without any
8 briefing, changing what the protocol was in this case, and I
9 don't think they could ever show good cause if Your Honor
10 actually saw -- had a record in front of you. So I don't know
11 how we can even do this. I don't know what to tell these
12 experts. I'm going from Dr. Lagana's deposition to defend
13 Dr. Hecht's the next week. I mean, I don't know what -- how
14 we're supposed to do this.

15 THE COURT: And Hecht's report is 123 pages. These
16 are quite extensive reports.

17 MR. SLATER: No, it's --

18 THE COURT: I do have the reports --

19 MS. COHEN: And it's not even just the report. That
20 really was my doing --

21 MR. SLATER: Your Honor --

22 (Simultaneous crosstalk.)

23 MR. SLATER: -- Dr. Hecht's report is not 123 pages.
24 It's -- I'll tell you right now. It's 30 -- I mean, it's less
25 than this because some of the pages are actually lists of

1 references. The text part of the report is 27 pages, and a big
2 chunk of that report we've agreed is not subject to the
3 deposition because it dealt with liability, so maybe 20 pages
4 of the report is subject to the deposition.

5 THE COURT: All right. I stand corrected. I'm
6 looking at the report but he's got a bibliography that has how
7 many sources?

8 MR. SLATER: Most of his attachments are his CV, Your
9 Honor. He has 388 publications in the peer-reviewed
10 literature, so that's -- most of the attachments are his CV.
11 The references that are attached are -- or that are numbered
12 it's, like, 100 and something -- let me see, 146 references.
13 There's nothing peculiar about that. That's a normal,
14 peer-reviewed article.

15 I mean, they -- I'm just saying, Your Honor, they're
16 making it sound like, Hey, no big deal, but I'm telling you
17 it's a big deal. It's going to be a major scheduling problem.
18 It's going to be a major issue on our end. It's not what the
19 order says so they're essentially getting you to change the
20 order based on pointing to Dr. Panigrahy's report. They should
21 make a showing for why they can't cover it in that time period.

22 MS. COHEN: You know, and my showing --

23 MR. SLATER: I was told -- please let me finish.
24 Please let me finish --

25 MS. COHEN: Sure.

1 MR. SLATER: I was told the reason they wanted more
2 time is because they have multiple lawyers who want to ask
3 questions. Now it's this complicated area.

4 If you read -- if you see all the reports, Your
5 Honor, I think you'd look and see it's actually a standard
6 report in any case. There's an opinion and there's a bunch of
7 scientific literature. I mean, there's nothing that requires
8 this, and I don't know how we can comply on this kind of notice
9 and start coming up with more dates.

10 I mean, I can tell you my month of August is
11 horrific, and I'm handling two of these experts who have
12 committed to a specific day weeks and weeks ago. When we
13 served these reports July 6, that's when they set their
14 schedules and we gave the dates.

15 Your Honor, I think we need to brief this issue, and
16 they have to establish good cause rather than what we're doing
17 here.

18 THE COURT: All right. Ms. Cohen.

19 MS. COHEN: Yeah, the only thing I was going to say,
20 again, in other mass tort litigations that we've all been
21 involved in we've had extended time beyond seven hours for the
22 first time someone is being deposed with this many defendants.
23 In fact, this is more defendants involved in this than I have
24 ever seen before in a case, and we're trying to get everyone's,
25 you know, collective spots together to make this as efficient

1 as possible.

2 I do not think it's out of bounds or in any way
3 unreasonable asking for more than seven hours. In fact, we
4 were very, very specific about only doing actually the seven
5 hours so that, A, if folks wanted to be deposed in one day and
6 get it done with, that they could.

7 If they feel like mush, just like, you know, both of
8 you are saying, then we can certainly stay over a night or find
9 another date for the last part, maybe do the last part in --
10 virtually. There are ways to cover that, but it's not just cut
11 us off at seven hours. And, yeah, should we have raised it
12 earlier? Perhaps that's true. And I think you said that
13 already that you're not going to say we waived our rights.

14 We started looking at this, we started reading the
15 reports and talking amongst ourselves as defendants and
16 realized it was going to be very difficult to get all the
17 questions and -- including the specific issues raised about
18 each defendant where those were raised.

19 We're not looking for trouble. We're not looking to
20 extend this, you know, anyway that's beyond fair or reasonable.
21 We just want to have that cushion if we need it. And, again,
22 if we can't finish it in one day, we can work together
23 professionally to find time to finish the last part, you know,
24 remotely or something like that. We can make it work, we
25 always do, and I don't think it's asking for too much.

1 MR. SLATER: I can tell you, Your Honor, counsel just
2 said, We want a cushion if we need it. You can't establish
3 good cause based on, We need a cushion if we need it, number 1.

4 Number 2, they accepted the dates that we offered as
5 single dates a while ago so this is an afterthought to say,
6 Hey, just in case, we want to just carve out more time. They
7 need to show good cause. There is no showing of that. And
8 counsel says "other mass torts," I don't know what mass torts
9 counsel is talking about, but in the Benicar litigation, which
10 was in front of Judge Kugler, every deposition was conducted in
11 one day. So I'm --

12 MS. COHEN: One defendant.

13 MR. SLATER: -- I don't know what counsel -- I'm sure
14 we could find cases where it was extended, and I think we can
15 find plenty of cases where they weren't. We're talking about
16 this case where we followed the order, we provided multiple
17 single dates for the deposition which is what the order told us
18 to do. Defense never asked for more time at that time. They
19 weren't surprised by what the scientific issues were. They had
20 been talking to their experts for well, well before they ever
21 got these reports. Then they got the reports and the dates and
22 accepted single dates.

23 Then later, just last week, they said, Oh, now we
24 want more time. I really -- Your Honor, I think they'd have to
25 brief this and show good cause, which they could never show for

1 this extension of these depositions.

2 MS. COHEN: And, Your Honor, just to chime in here,
3 Ms. Walker sent an email when she was accepting the dates
4 talking about how we're going to work this and what the
5 parameters are going to be. So the response was, We'd like to
6 accept the following dates but let's talk about the parameters.
7 I can find the email. So it wasn't just that we accepted dates
8 and later changed our mind. It was part and parcel to the
9 discussion --

10 MR. SLATER: No --

11 MS. COHEN: -- about the limits and how we're going
12 to do it. So, again, I think Your Honor is the one that should
13 decide the issue of, you know, should there be good cause
14 shown, not Mr. Slater telling me I have to show good cause
15 shown.

16 I've shown it here. These are very complex issues.
17 These are important issues. Unlike Benicar, we have 80
18 defendants. It's a huge difference. Every one is entitled
19 under due process to either ask their questions or have them
20 asked, not have them cut off.

21 MR. SLATER: Well, now we're into another issue.
22 First of all, the letter, Your Honor, did not say that they
23 were contemplating whether the time set aside for the single
24 day was adequate. They told us they're going to let us know, I
25 think about who was going to ask the questions or something

1 like that or the logistics of, are they going to be in person
2 or on Zoom, which we worked all that out fine.

3 The fact that there's 80 defendants, that's why
4 there's a defense leadership group that was appointed to take
5 the lead on these depositions and represent everybody. We are
6 not objecting to one other person or maybe two other people
7 with reasonable, non-duplicative new questions to follow up,
8 but they're not bringing a string of eight people in there.
9 That's misleading.

10 And they all have exactly the same issue, does the
11 NDMA, does the NDEA plausibly cause a risk of cancer to humans?
12 There's not a different issue for any defendant. It's exactly
13 the same issue. The only difference between defendants is how
14 much was in your pills and that's it. And that doesn't take --
15 need extra time to be explored, it's the opinion.

16 So, again, if they're going to ask to do this, they
17 need to do it on a motion, they need to do it on briefing, so
18 we can actually show Your Honor that what they're saying is
19 just not true, and that these reports are not super complex or
20 different from what's done in the normal case.

21 If they want to make a specific issue on Dr.
22 Panigrahy, we'll take that up, and I think we'll make a very
23 convincing argument to Your Honor that you don't just count the
24 pages in the report to say you need more time because I think
25 we'll be able to show it's not needed.

1 MS. COHEN: And again, Your Honor, I'm not relying on
2 the number of pages. I'm relying on the number of defendants,
3 the complexity of the issues, the importance of the issues.
4 And in some litigations where we come in and say, We want two
5 days, we didn't do that. We were very restrictive here asking
6 for just ten hours. I don't think there's anything
7 unreasonable about that. I think we can either finish it in
8 the day in question or agree to complete whatever is left by
9 virtually some time thereafter.

10 THE COURT: All right. I believe the nature --
11 because of the nature of the litigation, the complexity of the
12 litigation, that ten hours -- that good cause has been
13 established to limit the depositions at ten hours. I don't
14 think that's excessive.

15 I appreciate the scheduling problems that have been
16 created by the fact that this issue was raised late. It should
17 have been raised sooner. But I expect that you will be able to
18 work through those scheduling problems. I am not going to
19 limit the deposition to seven hours. I am going to limit it to
20 ten hours. And whether that needs to be accomplished over two
21 days, that will be up to you all to be able to resolve.

22 But given the complexity of the matter, given the
23 importance of the matter, given the number of parties,
24 especially the number of defendants in this case, I think that
25 ten hours is reasonable and so ruled.

1 Now, having said that, Mr. Slater, you're free to
2 move for reconsideration or otherwise challenge this decision,
3 and I respect your judgment in deciding whether to do that
4 either by way of reconsideration or asking Judge Kugler to
5 weigh in on the issue. But I -- you know, my motivation always
6 has been to move this matter along. I know that extending the
7 depositions provides -- presents scheduling problems, but I
8 think you can work through them, and I just think this is the
9 appropriate resolution in a case of this nature.

10 MR. SLATER: Well, Your Honor, thank you for the
11 guidance. I just want to -- I wanted to just clarify one issue
12 and tell you thank you for your guidance because I can tell you
13 that at the conclusion of the depositions we -- I expect we're
14 going to make a motion because there's -- the only way that
15 they're going to need more than seven hours is if they drag it
16 out and spend a lot of time on things that Your Honor I think
17 will sit and, you know -- you didn't need to ask four hours of
18 questions on something that can be covered much quicker.

19 So I think -- I wanted to put that on the record
20 because I expect we will be filing something, and they should
21 tell us I think at the end of the deposition do they intend to
22 seek more time after the seven hours or not so we can then know
23 where we stand.

24 The other issue is, how many people can question? We
25 don't need a conga line of lawyers walking in here and asking

1 all sorts of questions, especially duplicative questions,
2 because they all want to get their voice in the transcript so
3 they can show their client they asked questions. I'm very
4 concerned where counsel is trying to leave the door open. I
5 think there needs to be a limitation to no more than, frankly,
6 two questioners in any deposition.

7 MS. COHEN: And I'm happy to respond. Again, our
8 plan is to have the lion's share of the questions asked by one
9 person. I think some of the response -- some of the need to
10 ask further questions will depend on what the witness says. I
11 don't think we can say that in advance. We're going to try and
12 keep it as limited as possible.

13 You know, so I don't have a specific number in mind.
14 I can get back to you once I counsel more with my -- with the
15 group of defendants. But, again, our hope is to have the
16 person questioning, maybe a couple of other ones, but it really
17 depends on what the witness says.

18 THE COURT: I understand that, and you should
19 endeavor to have, as you said, one principal questioner, one
20 primary questioner, and you can have one other person. And if
21 there's more than that, well, we'll deal with it on a
22 case-by-case basis as it happens because it's hard to do this
23 in the abstract and say, Oh, no, only one other person can ask
24 a question. What we'll end up then is texts being sent and
25 notes being passed and so it won't be one person asking -- so

1 it will be one person posing the question out loud being
2 prompted by others, and that may not be the most efficient way
3 to handle this.

4 But I understand your concerns, Mr. Slater, and
5 certainly you're free to file the appropriate motion. Also, I
6 do want to urge counsel to endeavor to complete the deposition
7 within seven hours. As you heard me today, I'm not requiring
8 anyone to stay beyond seven hours of question-and-answer time.
9 If it can't be completed within those seven hours, you're going
10 to have to come up with another day for completion of a
11 deposition. And so I urge you to complete that deposition
12 within those seven hours, but understand that I'm not -- I'm
13 imposing a limit of ten hours.

14 MS. COHEN: Okay.

15 THE COURT: All right. Is there --

16 MS. COHEN: Your Honor, we appreciate your time and
17 appreciate the short notice jumping on the call. And I think
18 Mr. Slater and I, we've known each other a long time, I'm
19 hoping we can work this out and see where we are at seven
20 hours, and I can say, Hey, I have 20 more minutes or, you know,
21 whatever it is. I feel like we can work it out at the time.
22 I'm hopeful of that.

23 THE COURT: Well, I'm hopeful, too.

24 Anything else, Mr. Slater?

25 MR. SLATER: No, I was going to say if counsel were

1 to say, I need 15 or 20 more minutes, of course I would agree
2 to it under these circumstances.

3 My concern is, Oh, we don't know, we need to go back
4 and talk to our team; and I can guarantee, Your Honor, under
5 those circumstances you'll be getting briefs from us.

6 THE COURT: All right. Well --

7 MR. SLATER: Because the scheduling is going to be
8 very, very difficult after we were led to believe that we had
9 given -- we had complied with the order, and we were led to
10 believe that those dates had been accepted. So I don't know
11 that it's going to be so easy to find additional dates where
12 counsel and everybody else can be for more depositions. But I
13 hope, as Your Honor hopes, that this doesn't become an issue we
14 have to bring back to you. But if we walk out of that room and
15 they say they want another three hours, unless something really
16 extraordinary happens we'll be filing more motions.

17 THE COURT: Well, I want to say this, please. I just
18 want to say this, that I expect that you'll be able to work it
19 out. I think you should be able to work it out. I don't think
20 every deposition has to take ten hours. I don't think every
21 deposition has to take eight hours. But might get to that
22 point where you're rushed because you're limited to seven hours
23 and you can't go for another 30 minutes.

24 I expect that reasonable people will work that out.
25 Nobody wants to bring anybody back a second day, and I think

1 there should be great incentive to accomplish the deposition
2 within the seven hours. And I understand that if they come
3 back and they say, Oh, no, no, no, we've got to look at the
4 transcript and let you know how many more hours we have,
5 whether we're going to need those three additional hours, I
6 expect I'll be seeing stuff in writing from you all in terms of
7 briefs, and I'll deal with it then. But I expect you all to
8 work together to get this done in a professional way.

9 MR. SLATER: One last question, Your Honor, in terms
10 of if there's subsequent questioners, am I correct that those
11 subsequent questioners are to ask new questions on new issues
12 and not just duplicate what the other lawyer did?

13 THE COURT: Yes, you are correct.

14 MR. SLATER: Thank you.

15 THE COURT: So it's clear, it is not a second chance
16 to ask the same question over and over again. Hey, I've sat
17 through plenty of proceedings in my days where the same
18 question gets asked repeatedly until the witness answers in a
19 way that the questioner is happy with, but that's not going to
20 happen here. You get --

21 MR. SLATER: We --

22 (Simultaneous crosstalk.)

23 THE COURT: -- you ask your question. You get your
24 answer. That's it.

25 MS. COHEN: No, we totally understand. You know, we

1 want the same in return. I mean, obviously all these rules
2 apply both ways, and we certainly don't want to --

3 THE COURT: Sure --

4 MS. COHEN: -- open our experts up to repeat. So
5 we're all in the same boat together, and we're going to make it
6 work.

7 THE COURT: Okay. Good. All right. Anything else?

8 MS. COHEN: Thank you all.

9 THE COURT: Okay. Thanks, Rhéa, for being available
10 on such short notice.

11 MS. COHEN: Yes, we appreciate that very much.

12 THE COURT REPORTER: You're welcome.

13 THE COURT: Do you need me to reduce this to an
14 order?

15 MR. SLATER: I think it might help but --

16 MS. COHEN: Yeah.

17 MR. SLATER: -- it's up to Ms. Cohen. I mean, we
18 have the transcript -- frankly, we have the transcript. It's
19 sufficient for me.

20 MS. COHEN: I'm fine with the transcript as well. I
21 think you were very clear in your rulings.

22 THE COURT: All right. If you need any more clarity,
23 let me know, but I won't issue an order. We'll rely upon the
24 transcript.

25 And, again, thanks, Rhéa, again for being available

1 on short notice.

2 THE COURT REPORTER: You're welcome, Judge.

3 (Proceedings conclude 1:55 p.m.)

4 -----

5 I certify that the foregoing is a correct transcript
6 from the record of proceedings in the above-entitled matter.

7

8

9 /S/Rhéa C. Villanti, CCR, CRCR

8/9/21

10 Court Reporter/Transcriber

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Case 1:19-md-02875-RMB-SAK Document 1473-33718 Filed 08/10/21 Page 31 of 46 PageID:						
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Case 1:19-md-02875-RMB SAK Document 1473-33720 Filed 08/10/21 Page 33 of 46 PageID:	19/22 20/2 26/9 27/23 cancer [2] 11/16 22/11 careful [2] 3/18 3/22 carve [1] 20/6 carved [1] 15/12 case [16] 9/3 9/6 10/18 11/12 14/10 14/16 16/8 18/6 18/24 20/6 20/16 22/20 23/24 24/9 25/22 25/22 case-specif ic [4] 9/3 9/6 10/18 11/12 cases [3] 13/1 20/14 20/15 causation [6] 8/16 10/20 11/1 11/6 11/13 14/21 cause [18] 10/9 10/11 11/7 11/16 12/3 14/3 14/15 14/17 15/19 16/9 18/16 20/3 20/7 20/25 21/13 21/14 22/11 23/12 cautious [2] 6/15	7/13 3/13 CCR [1] 30/9 certainly [10] 6/21 12/2 12/8 12/21 14/9 14/18 15/2 19/8 26/5 29/2 certify [1] 30/5 challenge [1] 24/2 chance [2] 15/8 28/15 change [1] 17/19 changed [1] 21/8 changing [2] 16/6 16/8 checked [1] 4/5 chime [1] 21/2 chunk [1] 17/2 circumstanc es [3] 11/8 27/2 27/5 cited [1] 11/4 CIVIL [1] 1/3 clarify [1] 24/11 clear [3] 4/12 28/15 29/21 client [1] 25/3 close [1] 7/24 COHEN [7] 1/6 1/16	2/4 4/6 5/6 18/18 29/17 Cohen's [1] 5/5 colleague [2] 2/19 4/5 colleagues [2] 3/9 3/20 collective [1] 18/25 come [8] 7/10 10/24 12/8 12/16 14/2 23/4 26/10 28/2 comes [1] 6/18 comfortable [2] 5/13 5/14 coming [5] 2/20 4/21 4/22 13/2 18/9 Commencing [1] 1/9 committed [1] 18/12 complete [3] 23/8 26/6 26/11 completed [1] 26/9 completion [1] 26/10 complex [3] 11/2 21/16 22/19 complexity [3] 23/3 23/11 23/22 complicated [1] 18/3 complied [2] 15/24	27/9 18/8 comply [1] 14/19 comprehensi ve [1] 1/20 computer [1] 1/20 computer-ai ded [1] 1/20 concern [2] 7/6 27/3 concerned [2] 11/9 25/4 concerns [1] 26/4 conclude [1] 30/3 conclusion [1] 24/13 conduct [1] 7/23 conducted [2] 4/25 20/10 conference [2] 1/5 5/19 conga [1] 24/25 contaminate d [1] 10/21 contamination [1] 11/15 contemplate d [1] 10/8 contemplati ng [1] 21/23 continue [3] 11/22 15/11 15/20 convincing [1] 22/23 convoluted [1] 2/15
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call [4] 2/4 2/13 10/10 26/17 Camden [1] 1/8 came [2] 10/6 15/7 can [48] can't [5] 17/21	10/9 10/11 11/7 11/16 12/3 14/3 14/15 14/17 15/19 16/9 18/16 20/3 20/7 20/25 21/13 21/14 22/11 23/12 cautious [2] 6/15	1/3 24/11 clarify [1] 29/22 clear [3] 4/12 28/15 29/21 client [1] 25/3 close [1] 7/24 COHEN [7] 1/6 1/16	11/2 21/16 22/19 complexity [3] 23/3 23/11 23/22 complicated [1] 18/3 complied [2] 15/24	10/8 contemplati ng [1] 21/23 continue [3] 11/22 15/11 15/20 convincing [1] 22/23 convoluted [1] 2/15

C	9/14 12/15 17/21 19/10 covered [1] 24/18 COVID [3] 3/16 4/16 7/8 crazy [1] 9/7 CRCR [1] 30/9 create [2] 12/19 12/24 created [1] 23/16 critical [1] 8/17 crostalk [5] 7/3 13/12 15/1 16/22 28/22 cushion [3] 19/21 20/2 20/3 cut [2] 19/10 21/20 CV [2] 17/8 17/10	defendants [15] 1/18 3/5 5/25 10/21 12/11 13/4 18/22 18/23 19/15 21/18 22/3 22/13 23/2 23/24 25/15 defending [1] 6/16 defense [14] 2/25 3/11 3/15 4/7 5/11 7/9 8/11 8/24 10/5 10/9 15/16 15/18 20/18 22/4 depend [2] 13/13 25/10 depends [1] 25/17 deponents [1] 9/13 deposed [5] 4/5 11/21 16/1 18/22 19/5 deposition [28] 3/6 4/3 6/11 6/16 7/25 8/19 8/24 decision [1] 24/3 [1] 24/2 defend [1] 16/12 defendant [5] 3/21 11/14 17/4 20/10 19/18 20/12 22/12 defendant's [1] 11/15	26/11 27/20 27/21 28/1 depositions [29] 2/16 4/11 4/25 6/18 8/12 8/14 9/13 9/20 9/25 10/7 10/12 10/19 11/13 11/18 11/20 13/1 13/24 14/5 14/22 15/11 15/13 15/17 16/7 21/1 22/5 23/13 24/7 24/13 27/12 designated [1] 8/23 did [2] 21/22 28/12 didn't [2] 23/5 24/17 difference [6] 5/23 6/5 6/6 10/20 21/18 22/13 different [10] 5/24 12/11 12/12 12/12 12/13 12/13 13/4 22/12 22/20 difficult [3] 6/1 19/16 27/8 discussion [1] 21/9
cooper [1] 1/7 correct [3] 28/10 28/13 30/5 corrected [1] 17/5 could [10] 2/11 2/13 8/1 11/7 13/6 15/3 16/9 19/6 20/14 20/25 counsel [18] 3/10 4/3 8/11 10/14 10/17 11/9 11/22 13/7 16/6 20/1 20/8 20/9 20/13 25/4 25/14 26/6 26/25 27/12 count [1] 22/23 countless [1] 9/1 country [4] 4/16 4/22 6/4 7/11 couple [5] 9/6 11/23 12/17 15/7 25/16 course [2] 14/4 27/1 court [7] 1/1 1/22 2/3 2/12 3/2 5/2 30/10 COURTHOUSE [1] 1/6 cover [6] 8/25 9/12	day [20] 9/24 11/21 11/22 11/25 12/8 12/22 13/9 13/24 13/25 14/9 15/12 15/15 18/12 19/5 19/22 20/11 21/24 23/8 26/10 27/25 days [12] 8/20 9/10 9/11 10/7 10/12 11/23 14/25 15/7 15/10 23/5 23/21 28/17 deal [4] 17/16 17/17 25/21 28/7 dealing [2] 5/24 14/20 dealt [1] 17/3 decide [1] 21/13 decided [1] 16/5 date [2] 16/4 19/9 dates [19] 9/25 10/1 10/2 10/4 10/4 16/2 16/3 18/9 18/14 20/4 20/5 20/17 20/21 20/22 21/3 21/6 21/7 27/10 27/11	defendants [15] 1/18 3/5 5/25 10/21 12/11 13/4 18/22 18/23 19/15 21/18 22/3 22/13 23/2 23/24 25/15 defending [1] 6/16 defense [14] 2/25 3/11 3/15 4/7 5/11 7/9 8/11 8/24 10/5 10/9 15/16 15/18 20/18 22/4 depend [2] 13/13 25/10 depends [1] 25/17 deponents [1] 9/13 deposed [5] 4/5 11/21 16/1 18/22 19/5 deposition [28] 3/6 4/3 6/11 6/16 7/25 8/19 8/24 decision [1] 24/3 [1] 24/2 defend [1] 16/12 defendant [5] 3/21 11/14 17/4 20/10 19/18 20/12 22/12 defendant's [1] 11/15	26/11 27/20 27/21 28/1 depositions [29] 2/16 4/11 4/25 6/18 8/12 8/14 9/13 9/20 9/25 10/7 10/12 10/19 11/13 11/18 11/20 13/1 13/24 14/5 14/22 15/11 15/13 15/17 16/7 21/1 22/5 23/13 24/7 24/13 27/12 designated [1] 8/23 did [2] 21/22 28/12 didn't [2] 23/5 24/17 difference [6] 5/23 6/5 6/6 10/20 21/18 22/13 different [10] 5/24 12/11 12/12 12/12 12/13 12/13 13/4 22/12 22/20 difficult [3] 6/1 19/16 27/8 discussion [1] 21/9

D	17/20 22/21 Dr. [2] 16/13 16/23 Dr. Hecht's [2] 16/13 16/23 drag [1] 24/15 draw [1] 5/12 due [1] 21/19 duplicate [1] 28/12 duplicative [2] 22/7 25/1	21/3 21/7 end [5] 9/8 14/1 17/18 24/21 25/24 endeavor [2] 25/19 26/6 enough [1] 3/12 entitled [2] 21/18 30/6 equally [2] 6/20 11/14 especially [2] 23/24 25/1 E each [3] 8/23 19/18 26/18 earlier [1] 19/12 easier [1] 3/24 easy [1] 27/11 efficient [4] 3/5 8/12 18/25 26/2 efficiently [1] 12/9 eight [2] 22/8 27/21 Eisenhower [1] 1/13 either [4] 10/22 21/19 23/7 else [7] 5/7 7/16 8/1 15/9 26/24 27/12 29/7 email [2]	18/2 22/5 27/12 everybody's [1] 4/17 everyday [2] 8/18 8/19 everyone [2] 7/16 8/13 everyone's [1] 18/24 Everything [1] 10/5 exactly [3] 11/15 22/10 22/12 examination [1] 7/18 examining [1] 8/5 example [1] 12/5 excessive [1] 23/14 exist [1] 12/20 expect [9] 11/22 14/5 23/17 24/13 24/20 27/18 27/24 28/6 28/7 expert [14] 2/16 4/19 5/13 5/18 8/15 9/20 9/25 10/14 11/20 11/25 13/9 13/25 14/22 15/3 experts [8] 2/18 4/4 9/3 15/12 16/12 18/11	20/20 29/4 experts' [1] 15/16 explored [1] 22/15 extend [6] 10/6 10/10 10/11 11/20 13/23 19/20 extended [3] 14/14 18/21 20/14 extending [1] 24/6 extension [1] 21/1 extensive [1] 16/16 extra [4] 6/15 6/15 14/7 22/15 extraordinary [1] 27/16
doctor [1] 15/25 does [3] 11/22 22/10 22/11 doesn't [3] 12/19 22/14 27/13 doing [5] 7/18 9/4 16/20 18/16 19/4 don't [34] done [6] 2/22 12/9 15/13 19/6 22/20 28/8 door [2] 6/22 25/4 down [1] 6/23 Dr [6] 4/23 13/20 15/9 16/12				F fact [7] 9/25 13/15 13/16 18/23 19/3 22/3 23/16 fair [1] 19/20 feel [2] 19/7 26/21 feeling [1] 9/16 fifteen [1] 8/20 figure [1] 3/3 figures [1] 12/12 file [1] 26/5 filings [2] 24/20

F	free [2] 24/1 26/5 FREEMAN [1] 1/12 Friday [4] 11/21 12/21 13/7 16/1 front [2] 16/10 20/10 fully [1] 6/12 further [2] 3/17 25/10	33/23 27/9 gives [1] 14/16 go [3] 15/5 27/3 27/23 going [56] gone [1] 2/12 good [16] 10/9 10/11 11/7 12/2 14/3 14/15 14/17 16/9 18/16 20/3 20/7 20/25 21/13 21/14 23/12 29/7 got [5] 11/21 18/14 general [4] 10/20 11/5 11/13 14/21 Georgia [1] 1/17 Gerry [1] 1/7 get [14] 2/13 12/9 15/16 15/19 16/2 18/24 19/6 19/16 25/2 25/14 27/21 28/8 28/20 28/23 gets [2] 14/7 28/18 getting [3] 5/25 17/19 27/5 give [3] 7/17 9/18 16/3 given [4] 23/22 23/22	20/19 27/8 27/9 27/10 hall [1] 6/23 handing [1] 5/7 handle [1] 26/3 handling [1] 18/11 happen [1] 28/20 happening [1] 4/4 happens [3] 12/17 21/13 25/22 27/16 happy [6] 4/18 12/4 16/1 17/6 20/21 20/21 28/3 great [2] 14/6 28/1 GREENBERG [1] 1/15 ground [2] 9/12 9/14 group [2] 22/4 25/15 grueling [1] 13/8 guarantee [1] 27/4 guess [1] 6/7 guidance [7] 6/9 6/24 7/17 9/18 14/11 24/11 24/12	26/7 Hecht's [3] 16/13 16/15 16/23 held [1] 2/1 help [2] 2/9 29/15 helpful [1] 6/22 here [13] 7/11 7/23 9/11 10/13 12/24 13/3 14/17 18/17 21/2 21/16 23/5 24/25 28/20 Hey [5] 10/6 17/16 20/6 26/20 28/16 higher [1] 7/11 his [6] 9/14 11/21 13/21 17/8 17/8 17/10 hold [1] 13/18 honest [1] 5/12 honestly [1] 15/25 Honor [31] HONORABLE [2] 1/10 2/2 hope [2] 25/15 27/13 hopeful [2] 26/22 26/23 hopes [1] 27/13 hoping [1] 26/19
filling ... [1] 27/16 find [7] 16/1 19/8 19/23 20/14 20/15 21/7 27/11 fine [4] 8/4 15/2 22/2 29/20 finish [6] 12/22 17/23 17/24 19/22 19/23 23/7 first [7] 2/18 3/14 3/23 4/3 13/1 18/22 21/22 five [2] 2/18 2/19 folks [1] 19/5 follow [1] 22/7 followed [2] 9/5 20/16 following [2] 9/23 21/6 foregoing [1] 30/5 forth [2] 2/21 9/1 forward [1] 3/3 found [1] 11/23 four [2] 10/3 24/17 frankly [5] 5/15 6/3 11/11 25/5 29/18	G gave [2] 11/21 18/14 general [4] 10/20 11/5 11/13 14/21 Georgia [1] 1/17 Gerry [1] 1/7 get [14] 2/13 12/9 15/16 15/19 16/2 18/24 19/6 19/16 25/2 25/14 27/21 28/8 28/20 28/23 gets [2] 14/7 28/18 getting [3] 5/25 17/19 27/5 give [3] 7/17 9/18 16/3 given [4] 23/22 23/22	got [5] 16/1 17/6 20/21 20/21 28/3 great [2] 14/6 28/1 GREENBERG [1] 1/15 ground [2] 9/12 9/14 group [2] 22/4 25/15 grueling [1] 13/8 guarantee [1] 27/4 guess [1] 6/7 guidance [7] 6/9 6/24 7/17 9/18 14/11 24/11 24/12	happy [6] 4/18 12/4 12/21 13/11 25/7 28/19 hard [2] 8/13 25/22 has [12] 6/13 8/13 9/13 11/4 11/25 13/25 17/6 17/9 23/12 24/6 27/20 27/21 have [76] haven't [3] 14/18 15/22 15/22 having [4] 7/24 12/20 13/4 24/1 he [9] 3/19 4/8 4/19 4/20 4/20 4/22 4/23 11/21 17/9 he's [2] 16/1 17/6 heard [1]	
		H had [11] 4/22 10/25 13/16 15/8 16/3 16/10 18/21	27/13 26/23 26/23 26/22 26/23 hopes [1] 27/13 hoping [1] 26/19	

H	157/18	J 33724	last [10]	29/23
horrible	[1] 18/11	including	2/10 6/7	let's [1]
hour [1]	15/19	[1] 19/17	15/7 15/7	21/6
hours [50]		Industries	15/23 19/9	letter [1]
how [12]	2/8 8/2	[1] 1/18	19/9 19/23	21/22
	10/21	input [1]	20/23 28/9	level [1]
	16/11	5/25		4/8
	16/13 17/6	intend [1]	late [6]	liability
	18/8 21/4	24/21	8/21 8/22	[2] 1/4
	21/11	invite [1]	12/1 12/7	17/3
	22/13	12/10	12/21	like [11]
	24/24 28/4	involved	23/16	
however [2]	4/20 8/4	[2] 18/21	later [4]	6/1 11/3
huge [1]	21/18	18/23	5/5 13/7	14/10
humans [2]	11/16	IRBESARTAN	20/23 21/8	17/12
	22/11	[1] 1/3	lawyer [3]	17/16 19/7
I		is [72]	5/4 10/24	19/7 19/24
		issue [27]	28/12	21/5 22/1
		2/8 2/14	lawyers [9]	26/21
		2/24 3/14	4/6 4/7	limit [10]
		3/23 7/1	4/21 10/18	5/15 14/4
		8/9 11/16	10/23	14/13
		11/17	11/10 15/3	14/13
		12/16	18/2 24/25	14/23
		13/15	lead [2]	15/19
		13/17 15/7	3/9 22/5	23/13
	3/23 7/1	KATZ [1]	leadership	23/19
	7/17 8/7	17/18	[1] 22/4	23/19
	16/24 28/6	18/15	learned [2]	26/13
	28/7	21/13	4/20 4/20	limitation
I'm [32]	21/21	kind [1]	[1] 25/5	
I've [6]	22/10	18/8	limited [6]	
	22/12	knew [1]	9/19	
	22/13	16/3	27/8 27/9	10/20 11/5
	22/21	know [48]	left [1]	13/3 25/12
	23/16 24/5	known [1]	23/8	27/22
implication	24/11	26/18	length [2]	limits [1]
[1] 11/1	24/24	knows [1]	13/23	21/11
importance	27/13	4/15	14/13	line [2]
[2] 23/3	29/23	Kugler [2]	5/12 24/25	
23/23	issues [12]	20/10 24/4	lion's [2]	
important	3/16 6/2	KW [1] 1/4	9/5 25/8	
[1] 21/17	8/16 10/18		lists [1]	
imposing	12/13		16/25	
[1] 26/13	19/17	lack [1]	literature	
Inc [2]	20/19	4/9	[3] 11/5	
1/18 1/19	21/16	Lagana [1]	17/10 18/7	
incentive	21/17 23/3	4/23	litigation	
[1] 28/1	23/3 28/11	Lagana's	[8] 1/4	
inclination	it [73]	[1] 16/12	6/10 8/10	
[2] 11/19	it's [32]	largely [1]	8/17 8/19	
		9/4		

L	M	6/11 9/2 3/37/25	Minutes [9]	7/18 9/21
litigation.	made [2]	10/12	26/20	14/16 15/5
.. [3]	10/16	10/18 12/6	27/1 27/23	21/14 24/1
20/9 23/11	15/22	12/16	misleading	26/4 26/18
23/12	magnitude	13/23	[1] 22/9	26/24
litigations	[1] 8/10	14/20 26/2	mispronounc	Mr. Slater
[4] 9/10	main [1]	maybe [7]	e [1]	[13] 2/6
13/2 18/20	8/23	13/2 13/16	13/21	3/19 3/23
23/4	major [2]	13/20 17/3	MITCHELL	4/1 7/18
little [1]	17/17	19/9 22/6	[1] 1/6	9/21 14/16
8/21	17/18	25/16	month [3]	15/5 21/14
live [1]	make [13]	MAZIE [1]	15/11	24/1 26/4
4/18	4/11 6/6	1/12	15/13	26/18
LLC [2]	8/7 8/12	md [1] 1/4	18/10	26/24
1/12 1/18	12/22 15/3	me [11]	more [28]	Ms. [8]
LLP [1]	17/21	7/14 13/17	5/13 5/14	2/4 2/19
1/15	18/25	14/16	6/11 10/12	4/6 5/5
Lockard [1]	19/24	17/12	10/22	5/6 18/18
2/19	22/21	17/23	10/25 11/6	21/3 29/17
logistics	22/22	17/24	13/8 15/14	Ms. Cohen
[2] 14/7	24/14 29/5	21/14 26/7	18/1 18/9	[5] 2/4
22/1	makes [2]	29/13	18/23 19/3	4/6 5/6
long [3]	3/24 12/20	29/19	20/6 20/18	18/18
2/15 8/3	making [2]	29/23	20/24	29/17
26/18	9/7 17/16	mean [14]	22/24	Ms. Cohen's
look [3]	many [7]	3/11 11/20	24/15	[1] 5/5
13/20 18/5	9/10 9/11	12/5 13/21	24/22 25/5	Ms. Lockard
28/3	12/24 17/7	15/7 15/18	25/14	[1] 2/19
looked [1]	18/22	16/2 16/13	25/21	Ms. Walker
14/18	24/24 28/4	16/24	26/20 27/1	[1] 21/3
looking [5]	mask [1]	17/15 18/7	much [7]	
12/24	7/16	18/10 29/1	5/23 7/11	
17/6 19/14	masked [3]	29/17	10/21	
19/19	7/19 7/22	means [1]	most [4]	19/25
19/19	8/5	10/19	8/25 17/8	22/14
LORI [2]	masks [1]	mechanical	17/10 26/2	24/18
1/16 7/2	7/15	[1] 1/20	motion [3]	29/11
LOSARTAN	mass [4]	medical [1]	22/17	multiple
[1] 1/3	8/19 18/20	11/4	24/14 26/5	[5] 10/23
lot [6]	20/8 20/8	mentioned	motions [1]	11/9 12/10
5/24 5/25	MASTER [2]	[1] 4/3	27/16	18/2 20/16
9/12 9/14	1/10 2/2	might [2]	motivation	mush [3]
10/12	matter [5]	27/21	[1] 24/5	13/10 15/4
24/16	6/21 23/22	29/15	move [2]	19/7
loud [1]	23/23 24/6	mind [2]	24/2 24/6	must [2]
26/1	30/6	21/8 25/13	Mr [1]	7/22 8/5
Ltd [1]	maximum [1]	4/24 5/9	Mr. [13]	my [14]
1/18	5/11	minimum [2]	13/20	2/19 3/9
	may [9]	2/6 3/19	3/20 4/5	3/20 4/5
		2/11 15/23	5/6 7/6	5/6 7/6

Case 1:19-md-02875-RMB SAK Document 1478 Filed 08/10/21 Page 39 of 46 PageID: 33726

M	23/20 23/5	22/20 not [61] notes [1] 25/25 nothing [3] 11/2 17/13 18/7 notice [4] 18/8 26/17 29/10 30/1	Offered [1] 20/4 Official [1] 1/22 Oh [4] 20/23 25/23 27/3 28/3 okay [9] 4/14 6/25 7/17 7/20	20/16 20/17 27/9 29/14 29/23 other [32] others [1] 26/2 otherwise [2] 14/14 24/2 our [10]
my... [8]	7/9 16/20 17/22 18/10 24/5 25/14 27/3 28/17	negotiate [1] 9/8 negotiated [1] 8/20 never [4] 10/8 11/7 20/18 20/25	negotiate [1] 9/8 negotiated [1] 8/20 never [4] 10/8 11/7 20/18 20/25	20/17 27/9 29/14 29/23 other [32] others [1] 26/2 otherwise [2] 14/14 24/2
Mylan [1]	3/10	new [9] 1/1 1/8 1/14 4/21 4/21 7/12	new [9] 1/1 1/8 1/14 4/21 4/21 7/12	24/2 our [10]
N		nature [4] 14/16 23/10 23/11 24/9	now [15] 2/17 4/4 4/16 4/17 New Jersey [2] 4/21 28/11	2/3 6/2 8/24 17/18 19/13 21/8
NDEA [2]	10/21 22/11	next [10] 2/20 3/8 5/3 6/22	once [1] 25/14 one [43] ones [2]	25/7 25/15 27/4 29/4
NDMA [2]	10/21 22/11	7/12 11/21 12/7 12/21 13/7	15/10 15/21 16/6 16/24 18/3 number [13] 20/23	ourselves [1] 19/15 out [17] 3/3 3/22 6/1 11/23
NE [1]	1/17	16/1 16/13	21/21 24/1 21/21 24/1	14/7 15/12 19/2 20/6
necessary [1]	4/24	Nigh [1] 4/8	4/25 6/4 10/20	22/2 24/16
need [28]	5/7 10/9 10/23 10/25 12/2 14/1 14/12 15/19 15/20 18/15 19/21 20/2 20/3 20/3 20/7 22/15 22/17 22/17 22/24 24/15 24/17 24/25 25/9 27/1 27/3 28/5 29/13 29/22	night [1] 19/8 no [21] 5/7 6/11 7/21 8/7 9/15 10/4 10/23 11/6 12/2 12/2 16/17 17/16 20/7 21/10 25/5 25/23 26/25 28/3 28/3 28/3 28/25	8/11 9/23 10/8 10/8 10/22	26/1 26/19
Nobody [1]	27/25	numbered [1] 17/11	13/24 13/25 14/8 14/20 18/19 19/4	26/21
non [1]	22/7		22/13	27/14
non-duplica	tive [1]		24/14	27/19
needed [2]	10/1 22/25		25/23	outside [1] 12/20
needs [2]	7/24 17/13		open [2] 25/4 29/4	over [8] 4/22 6/3
			opinion [4] 9/22 9/22	10/7 14/24 19/8 23/20
			objecting [1] 22/6	28/16
			objection [2] 7/21	28/16
			10/4	overly [1]
			obviously [4] 8/11	11/2
			8/15 9/13	overnight [1] 13/11
			29/1	
			off [4] 5/7 13/3	
			19/11	
			21/20	
				P
				p.m [3] 1/9 2/2 30/3
				pages [9] 9/14 13/22 16/15

Case 1:19-md-02875-RMB/SAK Document 1473 Filed 08/10/21 Page 40 of 46 PageID:	3/18 4/9 4/24 5/10 5/10 5/13 5/14 5/16 6/5 7/9 7/13 7/15 9/2 9/6 12/10 22/6 22/8 24/24 27/24	phases [1] [33727] phone [1] 2/4 Piedmont [1] 1/17 pills [3] 10/22 11/15 22/14	precluded [1] 5/16 preferred [1] 12/23 present [4] 6/12 6/17 6/20 8/2	provide [2] 6/10 10/2 provided [3] 10/1 10/3 20/16	
pages... [6] 16/23 16/25 17/1 17/3 22/24 23/2	panicked [1] 9/16 Panigrahy [2] 13/20 22/22	per [1] 13/4 percent [1] 6/2	presents [1] 24/7 pressed [1] 13/16	provides [1] 24/7 providing [2] 6/24 14/11	
Panigrahy's [3] 13/21 15/9 17/20	parameters [2] 21/5 21/6	perhaps [2] 3/7 19/12	presumptive [1] 14/23	publication s [1] 17/9	
parcel [1] 21/8	period [1] 17/21	plaintiff [2] 4/6 plaintiffs [3] 1/14 2/18 6/18	primary [2] 11/11 25/20	put [1] 24/19	
Parkway [1] 1/13	person [23] 2/22 2/23	plaintiffs' [3] 3/1 4/4 5/10	principal [1] 25/19	Q	
part [5] 17/1 19/9 19/9 19/23 21/8	plan [1] 25/8	planning [1] 3/10	principles [1] 11/14	qualms [1] 8/7	
participati ng [1] 5/17	plausibly [2] 11/16	plausibly [2] 11/16	probably [2] 2/11	question [11] 5/18	
parties [1] 23/23	22/11	problem [1] 17/17	problem [1] 17/17	11/10 23/8	
partner [1] 5/6	Plaza [1] 1/7	problems [4] 12/24	problems [2] 24/24	24/24	
parts [1] 7/10	please [3] 17/23	questions [5] 11/11	problems [2] 25/24 26/1	25/24	
pass [1] 8/8	17/24	questioner [5] 11/12	problems [2] 26/8 28/9	26/8	
passed [1] 25/25	27/17	questioner [5] 11/12	problems [2] 28/16	28/9	
pause [1] 4/22	personal [1] 7/6	process [1] 21/19	problems [2] 28/18	28/18	
peculiar [1] 17/13	personally [2] 4/18	produced [1] 1/20	process [1] 21/19	28/23	
peer [2] 17/9 17/14	7/7	plus [1] 3/21	process [1] 21/19	questioner [5] 11/12	
peer-reviewed [2] 17/9 17/14	persons [3] 6/12 6/17	point [2] 3/19 27/22	produced [1] 1/20	questioners [3] 25/6	
people [21] 3/7 3/11	7/25	pointing [1] 17/20	products [1] 1/3	28/10	
	Pharma [1] 1/18	posing [1] 26/1	professiona l [1] 28/8	28/11	
	Pharmaceuti cal [1] 1/18	possible [6] 3/5	professiona lly [1] 19/23	questioning [3] 7/14	
	Pharmaceuti cals [1] 1/18	7/24 8/12	professiona ls [2] 14/6 14/6	9/5 25/16	
	phase [1] 8/15	12/9 19/1	prompted [1] 26/2	questions [19] 5/5	
		25/12	protocol [1] 16/8	5/7 9/3	
		potentially [1] 11/19		10/24	
				10/25	
				12/11	
				12/17 18/3	
				19/17	
				21/19	
				21/25 22/7	

Q	8/15 8/22 14/6 16/20 20/24 25/16 27/15 reason [4] 9/12 10/23 11/6 18/1 reasonable [8] 5/15 9/17 13/10 13/22 19/20 22/7 23/25 27/24 reasons [2] 9/23 12/1	remote [1] 3/2 remotely [2] 2/22 19/24 repeat [1] 29/4 repeatedly [1] 28/18 report [15] 9/14 10/14 13/21 13/22 15/9 16/15 16/19 16/23 17/1 received [1] 2/17 reconsidera tion [2] 24/2 24/4 record [6] 10/11 13/9 15/15 16/10 24/19 30/6 recorded [1] 1/20 reduce [2] 14/12 29/13 referenced [1] 4/10 references [4] 12/11 17/1 17/11 17/12 regard [1] 4/11 related [1] 8/9 relates [1] 2/15 relief [1] 4/17 rely [1] 29/23 relying [2] 23/1 23/2	1473 33728	Resolve [1] 23/21 respect [1] 24/3 respond [4] 3/23 5/21 12/4 25/7 response [2] 21/5 25/9 restrictive [1] 23/5 return [1] 29/1 reviewed [2] 17/9 17/14 RheaVillant i [1] 1/22 Rh��a [5] 1/22 2/3 29/9 29/25 30/9 right [16] 2/22 3/25 4/4 4/16 6/9 9/21 reports 15/10 [14] 2/17 10/2 12/14 2/3 2/12 3/2 5/2 30/10 Reporter/Tr anscriber [1] 30/10 recorded [1] 1/20 reduce [2] 14/12 29/13 referenced [1] 4/10 references [4] 12/11 17/1 17/11 17/12 regard [1] 20/21 22/19 related [1] 8/9 relates [1] 2/15 relief [1] 4/17 rely [1] 29/23 relying [2] 23/1 23/2	1/13 2/14 rooms [1] 3/13 Roseland [1] 1/14 round [1] 13/2 ruled [1] 23/25 rules [1] 29/1 rulings [1] 29/21 rushed [2] 9/16 27/22
R	raise [1] 13/17 raised [7] 13/15 13/18 19/11 19/17 19/18 23/16 23/17 rates [1] 7/11 rather [5] 3/12 9/11 9/16 9/18 18/16 RBK [1] 1/4 RE [1] 1/3 read [2] 14/18 18/4 reading [1] 19/14 ready [1] 15/16 realize [1] 3/16 realized [1] 19/16 really [11] 2/15 3/5 3/20 8/13	received [1] 2/17 reconsidera tion [2] 24/2 24/4 record [6] 10/11 13/9 15/15 16/10 24/19 30/6 recorded [1] 1/20 reduce [2] 14/12 29/13 referenced [1] 4/10 references [4] 12/11 17/1 17/11 17/12 regard [1] 4/11 related [1] 8/9 relates [1] 2/15 relief [1] 4/17 rely [1] 29/23 relying [2] 23/1 23/2	reporter [6] 1/22 2/3 2/3 2/12 3/2 5/2 30/10 Reporter/Tr anscriber [1] 30/10 reports 15/10 [14] 2/17 10/2 12/14 2/3 2/12 3/2 5/2 30/10 Reporter/Tr anscriber [1] 30/10 reports 15/10 [14] 2/17 10/2 12/14 2/3 2/12 3/2 5/2 30/10 rights [1] 19/13 risk [2] 4/9 22/11 Road [1] 1/17 room [20] 3/11 4/7 4/9 4/18 4/25 5/3 5/3 5/8 5/11 5/13 5/14 5/18 5/19 6/13 6/13 6/22 6/23 7/7	RheaVillant i [1] 1/22 Rh��a [5] 1/22 2/3 29/9 29/25 30/9 right [16] 2/22 3/25 4/4 4/16 6/9 9/21 rights [1] 19/13 risk [2] 4/9 22/11 Road [1] 1/17 room [20] 3/11 4/7 4/9 4/18 4/25 5/3 5/3 5/8 5/11 5/13 5/14 5/18 5/19 6/13 6/13 6/22 6/23 7/7	safe [1] 6/4 said [12] 2/11 6/1 8/10 10/6 11/9 16/4 16/4 19/12 20/2 20/23 24/1 25/19 same [7] 11/16 22/10 22/13 28/16 28/17 29/1 29/5 sat [1] 28/16 saw [1] 16/10 say [17] 6/7 13/25 18/19 19/13 20/5 21/22 22/24 23/4 25/11 25/23 26/20 26/25 27/1 27/15 27/17 27/18 28/3

Case 1:19-md-02875-RMB SAK Document 1473 Filed 08/10/21 Page 42 of 46 PageID: 33729

S	15/22 18/24 sense [2] 7/25 14/17 17/15 19/8 22/18 says [7] 5/6 10/17 15/12 17/19 20/8 25/10 25/17 schedule [1] 14/24 scheduled [2] 13/14 13/24 schedules [1] 18/14 scheduling [5] 17/17 23/15 23/18 24/7 27/7 science [1] 8/16 scientific [5] 11/3 11/4 11/13 18/7 20/19 scientific-based [1] 11/3 seats [1] 5/19 second [3] 7/1 27/25 28/15 see [6] 10/15 12/17 17/12 18/4 18/5 26/19 seeing [1] 28/6 seek [1] 24/22 seems [1] 13/17 seen [2]	15/21 17/20 19/11 4/17 12/21 21/12 21/13 21/3 25/24 24/20 10/2 16/3 18/13 set [4] 10/5 11/25 18/13 21/23 seven [28] 8/18 9/12 9/19 9/24 12/25 13/3 13/4 13/9 14/1 14/10 14/19 15/3 15/14 15/19 18/21 19/3 19/4 19/11 23/19 24/15 24/22 26/7 26/8 26/9 26/12 26/19 27/22 28/2 seven-hour [1] 15/19 share [2] 9/5 25/8 she [1] 21/3 shoehorn [1] 15/9 shoes [1] 8/4 short [4] 2/20 26/17 29/10 30/1 should [18] 2/11 5/11 7/15 7/16 7/19 8/23 11/11 13/17	11/14 20/5 20/17 20/22 21/23 sit [3] 21/13 5/8 15/14 24/17 SLATER [15] 1/12 1/13 2/6 3/19 3/23 4/1 7/18 9/21 14/16 15/5 21/14 24/1 26/4 26/18 26/24 slight [1] 2/24 small [1] 13/5 so [57] solution [1] 13/10 shown [4] 14/15 21/14 21/15 21/16 shuffle [1] 5/4 side [7] 5/10 5/11 6/10 6/16 6/16 8/24 10/9 sides [2] 8/24 9/4 significant [2] 6/21 8/15 Simultaneou s [5] 7/3 13/12 15/1 16/22 28/22 since [3] 3/9 7/8 8/3 single [7] 10/3 10/3	2/10 7/4 sort [3] 2/13 2/23 12/23 sorts [1] 25/1 sound [1] 17/16 sources [1] 17/7 space [3] 3/12 6/14 6/14 spaced [1] 6/13 speak [1] 7/9 speaking [2] 7/16 7/19 SPECIAL [2] 1/10 2/2 specific [11] 4/8 9/3 9/6 10/18 11/12 12/16 18/12 19/4 19/17 22/21 25/13 spend [1] 24/16 spots [1] 18/25 spread [1] 3/22 staff [1] 8/2 stand [2] 17/5 24/23 standard [3] 8/18 9/24 18/5 start [2] 13/3 18/9 started [4] 7/8 8/21
----------	--	--	--	---

S	1/17 super [1] 22/19 support [1] 8/2 supposed [1] 16/14 sure [5] 8/8 12/22 17/25 20/13 29/3 surprised [1] 20/19 switch [3] 5/4 5/5 5/19 switching [1] 9/1	15/10 15/25 16/11 16/24 18/10 20/1 24/12 24/12 24/21 telling [2] 17/16 21/14 ten [18] 8/20 9/11 9/15 9/17 9/20 10/7 12/20 13/23 14/5 14/14 T 14/23 23/6 23/12 take [10] 2/6 2/15 6/18 8/23 15/16 22/4 22/14 22/22 27/20 27/21 taken [3] 2/19 14/8 14/23 taking [4] 3/6 3/9 6/11 7/24 talk [2] 21/6 27/4 talking [6] 8/21 19/15 20/9 20/15 20/20 21/4 team [1] 27/4 Telephone [1] 1/5 telephonica lly [2] 1/11 2/1 tell [10] 10/17	3/30 24/12 28/14 29/8 11/2 11/6 thanks [2] 29/9 29/25 that [135] that's [27] 3/23 4/4 6/7 6/7 6/24 8/4 10/22 11/17 11/17 11/20 11/21 11/21 12/22 13/10 13/21 16/4 17/10 17/13 18/13 19/12 19/20 22/3 22/9 22/14 23/14 28/19 28/24 Terminus [1] 1/16 terms [3] 11/1 28/6 28/9 Teva [2] 1/18 1/18 text [1] 17/1 texts [1] 25/24 than [16] 3/12 6/11 7/11 9/11 9/16 9/18 10/13 13/9 15/14 16/25 18/16 18/23 19/3 24/15 25/5 25/21 thank [9] 3/25 4/2 6/25 7/20	8/6 24/10 9/10 9/12 9/14 10/23 11/2 11/6 11/19 11/24 12/1 17/13 18/6 18/6 18/7 22/3 22/4 22/12 23/6 24/14 25/21 28/10 thereafter [1] 23/9 thereof [1] 4/9 these [27] 3/3 8/12 9/13 10/6 10/11 10/19 11/7 11/12 11/13 11/17 11/19 13/1 13/14 15/11 their [6] 15/12 16/11 16/15 18/11 18/13 20/20 21/19 25/2 25/3 them [7] 21/16 21/17 22/5 22/19 27/2 29/1 they [51] they'd [1] 20/24 they're [11] 7/13 14/19 15/8 15/14 17/15 17/19 21/24 22/8 22/16 22/18
started... [2] 19/14 19/14 starting [1] 4/17 STATES [1] 1/1 statistics [1] 12/13 status [1] 1/5 stay [6] 12/7 12/21 13/7 13/11 19/8 26/8 stenography [1] 1/20 still [1] 4/23 Streets [1] 1/7 string [1] 22/8 stuff [1] 28/6 subject [2] 17/2 17/4 subsequent [2] 28/10 28/11 such [2] 3/17 29/10 suddenly [1] 16/1 sufficient [5] 6/14 14/10 14/17 14/20 29/19 suggested [1] 9/11 suggesting [2] 3/8 3/19 suggests [1] 13/7 suite [1]				

Case 1:19-md-02875-RMB-SAK Document 1473 Filed 08/10/21 Page 44 of 46 PageID: 14

I	time [26]	Transcriber [33731]	27/2 27/4	20/17
they're... [1]	6/18 8/3 9/9 9/17	underlying [1]	21/24	
they've [2]	11/7 14/5 16/1 17/21	transcript [8]	12/13	21/24
	18/2 18/21	25/2 28/4	24/21 27/5	
10/16	18/22	29/18	10/15 14/9	21/18
11/4	19/23 20/6	29/18	14/19 15/2	usable [1]
thing [5]	20/18	29/20	25/18 26/4	4/10
6/7 12/23	20/18	29/24 30/5	26/12 28/2	use [2]
13/6 15/23	20/24	transcripti	28/25	6/13 9/15
18/19	21/23	on [1]	understandi	using [1]
things [2]	22/15	1/20	ng [2]	15/8
13/14	22/24 23/9	TRAURIG [1]		V
24/16	24/16	1/15	understood [1]	vaccinated
think [55]	24/22 26/8	trials [1]	9/24	[7] 3/18
third [1]	26/16	6/3	underway [1]	6/5 6/12
13/2	26/18	trouble [2]	2/16	6/12 6/17
this [64]	26/21	12/19	UNITED [1]	6/19 7/25
THOMAS [2]	times [1]	19/19	1/1	VALSARTAN
1/10 2/2	9/1	true [2]	unless [2]	[1] 1/3
those [13]	timing [1]	19/12	14/14	VANASKIE
7/18 8/4	10/10	22/19	27/15	[3] 1/10
10/24	today [6]	try [3]	Unlike [1]	2/2 8/10
13/23 14/8	2/19 2/23	9/8 12/15	21/17	variants
19/18	2/25 3/15	25/11	unreasonabl	[1] 3/17
23/18 26/9	12/18 26/7	trying [7]	e [2] 19/3	variation
26/12 27/5	together [5]	3/3 3/5	23/7	[1] 10/22
27/10 28/5	12/23	5/25 12/8	until [1]	various [1]
28/10	18/25	12/19	28/18	2/17
though [1]	19/22 28/8	18/24 25/4	up [15]	versus [1]
14/20	29/5	two [23]	2/20 6/11	3/14
thought [3]	told [7]	2/20 2/22	6/17 9/20	very [16]
2/13 8/22	4/6 4/7	3/1 3/7	11/12	3/17 6/4
9/17	10/1 17/23	3/12 3/14	12/20 15/7	8/17 9/17
three [19]	18/1 20/17	3/20 4/6	18/9 22/7	12/25 19/4
2/21 2/25	21/24	5/10 5/10	22/22	19/4 19/16
3/11 3/14	too [8]	5/24 6/6	23/21	21/16
3/15 4/7	2/15 2/15	6/17 8/20	25/24	22/22 23/5
5/24 6/6	7/15 9/7	10/3 10/7	26/10 29/4	25/3 27/8
6/11 6/19	12/1 13/5	10/12	29/17	27/8 29/11
6/19 7/25	19/25	14/25	upcoming [1]	29/21
9/9 10/3	26/23	18/11 22/6	2/16	videograph
14/1 14/3	tort [1]	23/4 23/20	upon [2]	r [2] 3/2
14/7 27/15	18/20	25/6	13/13	5/2
28/5	torts [3]	U	29/23	Villanti
through [3]	8/20 20/8	U.S [1]	urge [2]	[3] 1/22
23/18	20/8	1/6	26/6 26/11	2/3 30/9
24/8 28/17	totally [1]	under [4]	us [9]	virtually
tight [1]	28/25	11/7 21/19	9/18 10/1	[2] 19/10
12/25			10/6 19/11	

V		19/2 24/4 24/14 26/2 28/8 28/19	2/20 2/20 3/8 12/7 15/8 16/13	25/17 25/24 28/12	15/25 18/2 18/11 21/25
virtually.. . [1] 23/9		ways [5] 6/20 14/4 14/22 19/10 29/2	20/23 weekend [2] 11/24 16/2	what's [4] 4/16 10/13 10/15 22/20	whole [1] 8/17 why [6] 10/23 14/9
W		waived [2] 13/19 19/13	we [125] We'd [1] 21/5	weeks [2] 18/12 18/12	whatever [2] 23/8 26/21
walk [2] 5/18 27/14		we'll [12] 3/18 6/4 10/7 12/17	weigh [1] 24/5 welcome [2] 29/12	when [19] 4/20 4/20 5/6 6/17 7/24 9/23	will [21] 3/8 5/3 15/19 17/21 22/3
Walker [1] 21/3		22/22 22/22	30/2 well [12] 22/22	9/25 10/2 10/14	9/4 13/9 13/13 14/4
walking [1] 24/25		22/25	2/23 6/9	10/17 11/9	14/5 14/13
want [29] 3/20 4/11 4/24 5/9 6/19 7/13 8/11 9/2 10/6 10/18		25/21 25/21 25/24 27/16 29/23	11/10 20/20 20/20 21/21	11/22 14/7 14/22 15/19 16/3 18/12 18/13 21/3	14/14 14/23 23/17 23/21 24/17
11/10 12/9 12/10 12/22 18/2 19/21 20/2 20/6 20/24 22/21 23/4 24/11 25/2 26/6 27/15 27/17 27/18 29/1 29/2		3/5 3/17 5/24 5/25 7/5 7/22 7/23 8/14 12/8 12/15	25/21 26/23 27/6 27/17 29/20 were [13] 12/19	where [16] 7/11 9/10 11/3 11/4 12/19 19/18	24/20 25/10 26/1 27/24 willing [2] 4/19 4/23
wanted [6] 9/8 11/24 18/1 19/5 24/11 24/19		12/24 13/2 13/8 14/20 16/14 18/16 18/24 19/19	9/25 10/4 19/4 19/18 20/19 21/23 23/5 26/25 27/8 27/9 29/21	20/14 20/15 24/23 25/4 26/19 27/11 27/22	within [4] 26/7 26/9 26/12 28/2 without [4] 2/12 9/6 16/7 16/7 witness [8] 7/14 11/3
wants [6] 3/21 5/4 5/17 10/24 12/16 27/25		19/19 20/15 21/4 21/11 21/21	weren't [2] 20/15 20/19 what [20] 2/8 10/19	28/17 28/17 whether [4] 21/23 23/20 24/3 28/5	11/10 13/4 14/22 25/10 25/17
was [35] wasn't [1] 21/7		24/13 25/11 28/5 29/5 29/5	12/17 15/25 16/4	which [7] 2/16 8/10	witnesses [2] 2/16 2/16
waterfront [2] 9/1 12/15		we've [9] 5/2 6/1 8/20 12/23 17/2 18/20 18/21 26/18 28/3	16/8 16/11 16/13 17/18 18/16 20/8 20/13 20/17	8/16 20/9 20/17 20/25 22/2 while [2] 8/18 20/5	13/14 won't [2] 25/25 29/23
way [6]		wear [1] 7/15	20/19 21/4 22/18	who [10] 5/20 6/12 7/18 8/4	work [14] 6/20 14/7 19/22
		week [7]	25/10	10/25 14/8	19/24 21/4

W	you're [1] 7/15 7/24 8/2 19/13 24/1 26/5 26/9 27/22 27/22 29/12 30/2 your [41] yourselves [1] 6/14		
work... [9] 23/18 24/8 26/19 26/21 27/18 27/19 27/24 28/8 29/6 worked [3] 6/1 12/23 22/2 working [2] 8/3 8/13 would [16] 3/11 4/10 6/7 6/9 6/22 9/17 9/19 9/24 10/9 10/14 12/21 13/16 14/10 15/18 15/20 27/1 writing [1] 28/6	Z	Zoom [3] 5/1 5/17 22/2	
Y	Yahoo.com [1] 1/22 yeah [4] 15/6 18/19 19/11 29/16 years [1] 12/24 Yes [7] 2/5 2/7 2/10 4/1 7/21 28/13 29/11 York [1] 4/21 you [104] you'd [1] 18/5 you'll [3] 13/25 27/5 27/18		